

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Case no. 2010-CP-23-5933
Appellate Case No. 2012-213678

ROBERT FRANK GRANT, JR.,

Petitioner,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

PRO SE PETITION

Robert F. Grant, 277198
RCI, BB-56, POB 2039
Ridgeland, S. C. 29936

Other Counsel of Record:

Karen Ratigan
Ass. Attorney General
POB 11549
Columbia, S. C. 29211

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ISSUE PRESENTED

S.C. SUPREME COURT

Has the lower Court which is the Post-Conviction Relief Court (of Common Pleas for Greenville County) err dismissing Grant's application for post conviction relief (APCR) on the actual ineffective assistance of counsel claim?

STATEMENT

It was on 1-10-07 during the p.m. hours when petitioner Robert Frank Grant was at or near the Super Lodge Motel, 412 Mauldin Road, Greenville, S.C. (tr. p. 105 ll. 18-19) when he meet two (2) undercover law enforcement officials (Brian Tollisen and Patrick Swift) and the encounter resulted in what was the transfer supposedly of a .32 gram bag of crack cocaine for twenty (20) dollars. Specifically, officer Tollisen is the party who made the purchase (tr. p.109 ll. 7-8 and p. 113 ll. 10-11) Grant's role role in the purchase appeared or seemed to be more of the accommodation of a sale of illicit drug(s). See § 44-53-460. He was arrested on the scene or near the motel and charged with possession with intent to distribute cocaine base (crack cocaine) PWID, school-zone (sale) and threatening the life , etc of public official.

He was indicted at the March 2007 term of the Court of General sessions for Greenville County. His criminal trial; occurred on March 11-12, 2008; he was found guilty on the illicit drug offense and not guilty of threatening a public official offense. He was promptly sentenced by the trial judge to 20 years and 15 years concurrently. There must had been a prompt motion for reconsideration because the Court issued a 3-21-08 order which reduced the sentence to 15 years concurrently. (See Supplemental Appendix) A timely notice of appeal was given and on 4-4-2010 South Carolina Court of Appeals issued Unpublished Opinion No. 2010-UP-105 which dismissed the direct appeal after petitioner submitted a pro se brief. (tr. pp. 330-331).

Petitioner submitted an APCR of 7-21-2010, there was a subsequent APCR (tr. pp. 343-344). Petitioner had an evidentiary hearing on 10-31-12. The PCR trial court issued the 12-5-12 order of dismissal which is appealed to this Court herein. The clerk's office of this court wrote an 8-19-13 letter; it

gave Grant forty-five (45) days to submit this pre se petition.

ARGUMENT

The lower Court has erred denying and dismissing the APCR which set the actual ineffective assistance of counsel claim(s) independently and/or cumulative [errors]. Green v. State, 569 S.E.2d 318, 324 (2002). Where Grant raised the claim of actual ineffective assistance of counsel, for counsel failed to investigate witness(es) (interview), to object to the criminal trial judge's comment on lesser included offense; to arrange favorable plea bargain on several occasion(s) and to object during government's attorney's comment on state's witness (law enforcement official). (tr. p. 234 ll. 13-20) Criminal defense trial counsel indicated during pre-trial motion hearing, "Ms. Herlbeck: He gave me first names. And we were able to at least do something about that and try to find these witnesses. But what I'm describing is the information he gave me last night." (tr. p. 11 ll. 17-20).

Petitioner gave testimony at the PCR evidentiary hearing on 10-31-12, "I was telling you about which was Wayne and the other one was Betty, they witnessed it". (tr. p. 288 ll. 15-17). Criminal defense trial counsel testified on 10-31-12, "I asked him if he had any witnesses that he wanted me to contact and he says he will contact me with this witness information and he says he can't remember his witness names right now." (tr. p. 304 ll. 4-7). It was during the criminal trial where trial counsel requested that the circuit court judge charge the jury with the lesser included offense of simple possession of illicit drug(s). (tr. p. 210 ll. 2-3 and p. 211 l. 13). The judge commented, "I don't think it's a lesser included offense of distribution." (tr. p. 211 ll. 24-25). Criminal trial counsel failed to arrange a favorable guilty pleas bargain on several occasion(s). (tr. p. 320). The 10-23-07 fax which showed offer of 8 years stated, "In response to your question about the \$20 that was used to purchase the rock of crack cocaine, the officers confirmed that the money was not recovered nor was the serial number documented." In *Lafley v. Cooper*, 132 S.Ct. 1376, 1383 (2012), which is a case more comparable to Grant's position, there is the following language, "On two occasions, the prosecution offered to dismiss two of the charges and to recommend a sentence of 51 to 55 months for the other two in exchange for a guilty plea. In a communication with the court respondent

admitted guilt and expressed a willingness to accept the offer. Respondent, however, later rejected the offer on both occasions, allegedly after his attorney convinced him that the prosecution would be unable to establish his intent to murder Mundy because she had been shot below the waist. On the first day of trial the prosecution offered a significantly less favorable plea deal, which respondent again rejected. After trial, ... received a mandatory minimum sentence of 185 to".

Criminal defense trial counsel testified further, "the first one is dated July 13, 2007" (tr. p. 307 l. 2) and "The second offer is dated 9/28/07" (tr. p.307 l. 19) as far as favorable guilty plea offers were concerned. If counsel had made the necessary arrangement(s), he could have gained a more reasonable sentence. Again, trial counsel should have objected where the solicitor's official mentioned, "You know, what do the officers have to lose or gain here? Consider three officers who came in to testify. Would they risk their professional reputation and their career over two rocks of crack cocaine, twenty dollars worth?" (tr. p. 234 ll. 11-15) More, it was stated furthermore, "I submit that to believe what the defense is suggesting that you throw out all their testimony, it wasn't recorded, it didn't happen, then they must be conspiring, all three of them, ..." (tr. p. 234 ll. 16-20). See *Matthews v. State*, 565 S.E.2d 766 (2002). It is just improper for the government's attorney to comment on the credibility of witness(es). Also petitioner had indicated counsel was ineffective where she failed to investigate Tollisen's disciplinary record, he had received information the officer was terminated for misconduct while he was serving this sentence. (tr. p. 288 ll. 4-6). The total amount of action and/or inaction of criminal defense trial counsel were sufficient to amount to ineffective assistance of trial counsel.

CONCLUSION

Petitioner points that if his criminal trial counsel had arranged it where he could enter the guilty plea; he would have had to serve the eight (8) years sentence.

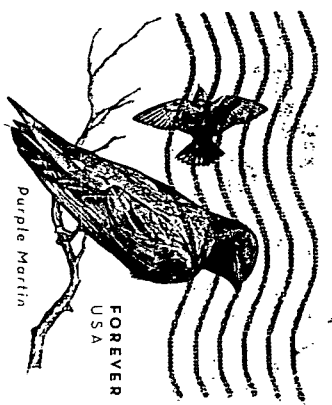
This 11th day of September 2013.

S/ Robert F. Grant

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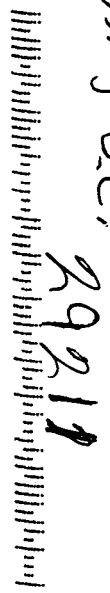


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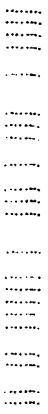
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